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6 DOMESTIC VIOLENCE TASK FORCE VIRTUAL MEETING

7 January 18, 2022

8 Held via Webex

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11 PRESENT:

12 Hon. Anna Barbara Hantz Marconi,

13 Associate Justice, New Hampshire Supreme Court

14 Hon. Susan Carbon, Circuit Court Judge

15 Hon. Diane Nicolosi, Superior Court Judge

16 Hon. John Yazinski, Circuit Court Judge

17 Mary Barton, Clerk, Circuit Court

18 Merrill Beauchamp, Director, Victim &

19 Witness Program

20 Kathy Beebe, Executive Director, Haven NH

21 Kristyn Bernier, Investigator, Belknap

22 County Attorney's Office

23 Steven Endres, Assistant County Attorney,

24 Merrimack County

25 Martha Ann Hornick, Grafton County



1 Attorney

2 Mary Krueger, Attorney, NHLA

3 Lynda Ruel, Director, Office of

4 Victim/Witness Assistance, NH DOJ

5 Scott Hampton, Director, Ending the

6 Violence

7 David Hobbs, Hampton, NH Association of

8 Chiefs of Police

9 Lyn Schollett, Executive Director, New  
10 Hampshire Coalition

11 Amanda Grady Sexton, Director of Public  
12 Affairs, New Hampshire Coalition

13 Jon Strasburger, New Hampshire  
14 Association of Criminal Defense Attorneys

15 David Vicinanzo, Attorney, DOVE Program

16 Patricia LaFrance, Attorney, The Black  
17 Law Group

18 Betsy Paine, Attorney, CASA NH

19 Pam Dodge, NHBA DOVE Program & 603 Legal

20 Sarah Freeman, Circuit Court

21 Administrator

22 Jean Kilham, Manager, NHJB Domestic  
23 Violence Program

24 Erin Jasina, Director, NHLA DV Program

25 Anne Zinkin, Supervisory Law Clerk, NHSC



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1 JUSTICE HANTZ MARCONI: Thank you.

2 Our third meeting -- technically, our  
3 fourth -- of the task force is beginning,  
4 this one to focus on the issue of  
5 publication of domestic violence  
6 appellate decisions. And frankly, I  
7 think we can think about trial court  
8 decisions, as well, as we think about  
9 this.

10 Before we get started, though, I  
11 want to circle back to last week and  
12 mention that during our second meeting,  
13 there was an exchange which may have and  
14 probably did indicate to many  
15 participants that the court wasn't  
16 interested in hearing all the criticism  
17 or anecdotal information or reports of  
18 issues.

19 And I just -- I sent an email around  
20 earlier today. I think there is a role  
21 in what we're doing for both anecdotal  
22 (audio interference) and also some good  
23 statistical information to inform our  
24 discussions.

25 So both -- and I thank Kristyn for



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1 sort of bringing this -- not bringing it  
2 to my attention but having a more  
3 elongated conversation. I know that some  
4 others called Anne. I appreciate that.  
5 And I want to assure the task force and  
6 that all issues related to what we're  
7 trying to do should be heard, will be  
8 heard. And I don't want anyone to think  
9 that we're not here with open ears.

10 As I said from the very beginning,  
11 there are limits to what we can do, but  
12 the goal of -- we the court can do,  
13 specifically. But the goal of this task  
14 force is to identify what I'll call gaps,  
15 if you will, in the system, some within  
16 the court, for sure, some that may take  
17 other entities to look at.

18 But I think my hope, and I would  
19 assume it's shared by the task force, is  
20 we can identify where more work needs to  
21 be done. So if there are any comments on  
22 that point, I'd love to hear them now, or  
23 we can move into the next topic.

24 And again, this is not a one-off,  
25 this task force. (Audio interference)



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1 regimented it pretty strictly so we can  
2 get through what it is we are tasked to  
3 do. But this is a beginning; it is not  
4 the end of addressing these issues.

5 And I know that many of you have  
6 been, so-called, around the table on  
7 these issues for many years, prior to my  
8 involvement. And I anticipate that a lot  
9 of you will be around the table going  
10 forward. So I look at this as an  
11 opportunity to guide and direct that  
12 future effort. There you go. Comments,  
13 input, feedback?

14 All right. I assume you've all done  
15 your homework on publication of domestic  
16 violence appellate and, let's say, trial  
17 court decisions. Any thoughts on this  
18 one?

19 And I will just sort of lay my  
20 perspective of how this became an issue.  
21 From the internal review of the case that  
22 prompted the task force, it became  
23 apparent that trial judges were relying  
24 on appellate decisions that, while  
25 public, were not published.



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1           And so as I outlined in my little  
2           outline about this charge, as with  
3           everything in the electronic age, things  
4           have been evolving. So prior to 2011,  
5           nothing was posted. Then prior to e-  
6           Filing but with sort of a web presence,  
7           we were posting all orders, we the  
8           Supreme Court.

9           Then given someone waking up to the  
10          prohibitions of the Violence Against  
11          Women Act, we started to not publish  
12          nonprecedential orders. And we would  
13          scrub the precedential opinions to take  
14          away identifying information.

15          I think the low-hanging fruit in  
16          this topic is maybe we start scrubbing  
17          all the nonprecedential orders so that  
18          they can be posted. So again, while  
19          these orders were public and anyone could  
20          go and get them, we just -- we as a  
21          government agency are not allowed to post  
22          them with identifying information.

23          So one obvious solution is to scrub  
24          all these decisions, orders, and let them  
25          all be posted on the internet. I am



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1 happy to hear other thoughts on the  
2 issue.

3 MS. KRUEGER: This is Mary Krueger  
4 from New Hampshire Legal Assistance.  
5 This has come up prior to this task  
6 force. Last year -- we've been hearing  
7 about these orders coming out. And the  
8 S.K. v. J.M. case, which came up in the  
9 review of the L.S. v. R.L. situation, was  
10 a case that we had heard about, but then  
11 we couldn't find it.

12 And then we figured out, oh, it's  
13 not on the website and then did some  
14 further digging and learned that -- my  
15 understanding, at least, was because of  
16 the Violence Against Women Act  
17 prohibition to disseminate identifying  
18 information about victims on the  
19 internet, which is a good policy,  
20 prevented the court from putting up some  
21 of these nonprecedential orders.

22 However, at the same time,  
23 naturally, these orders were being  
24 circulated within the court system. And  
25 if there was counsel involved, they would



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1 get a copy, certainly, because it was up  
2 on appeal.

3 But what was hard for us was that we  
4 didn't have any reason to know that these  
5 orders were being issued. And but for,  
6 like, sending somebody over to the  
7 Supreme Court to check on a regular  
8 basis, there's no way that we would know  
9 that the court had issued an order.

10 And as we know, that S.K. case that  
11 came out last -- I don't know if it was  
12 July or when it was -- was relied upon as  
13 a case to help make a decision. And if  
14 we don't, as attorneys, know about these  
15 cases, how can we expect pro se litigants  
16 or self-represented parties know about  
17 these cases?

18 So it seems to us that the solution  
19 is to make -- put them with the initials,  
20 as was done in the L.C. case, which was  
21 an opinion, and have the order itself  
22 written in a way so as not to provide  
23 identifying information and/or redact it  
24 so that it is equally available to the  
25 public so that we can all understand what



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1 the court has decided and why, in order  
2 to best articulate and craft our cases.

3 JUSTICE HANTZ MARCONI: I think that  
4 makes sense. Noting the distinction  
5 between precedential orders that  
6 establish, in a way, a new element or  
7 legal concept and nonprecedential orders  
8 that -- I mean, at least this was the  
9 thinking for many, many years --  
10 nonprecedential orders that are not cited  
11 as precedent but do provide guidance in  
12 terms of applying the law to a specific  
13 set of acts.

14 And so that, I think, is the  
15 distinction that has always existed in  
16 many case types. When things go by 3JX  
17 or nonprecedential order, it seems to be  
18 more fact-driven and only applicable to  
19 those parties.

20 Here, we have a glaring example,  
21 where counsel and litigants can learn  
22 from a nonprecedential order the  
23 application of the law to facts. So I  
24 think that makes a lot of sense. It was  
25 a period of time, as we indicated in the



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1 notes that I sent around, nonprecedential  
2 orders were published, if you will, on  
3 the court's website from 2014 to 2017,  
4 like I said, until someone woke up.

5 So we've had this issue, if you  
6 will, from 2018 to the present. So we're  
7 looking at a three-year period where  
8 those orders were not available unless  
9 someone came to the court, looked up DV  
10 cases -- and again, this is the Supreme  
11 Court -- and got copies of those orders.  
12 So I think that's a very valid  
13 observation.

14 Anyone else? I mean, and again, the  
15 prohibition is the court posting on the  
16 internet, as we circulated with -- and  
17 did a little bit of research to figure  
18 out the exact wording. And that's what  
19 we are looking at. It is not a  
20 prohibition against private agencies.  
21 It's a prohibition against states and  
22 government agencies, which is another  
23 interesting conundrum. But certainly --

24 MS. KRUEGER: Justice Hantz --

25 JUSTICE HANTZ MARCONI: Yeah.



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1 Certainly, scrubbing the orders, if you  
2 will, of identifying information is a  
3 logical response.

4 MS. KRUEGER: Justice Hantz Marconi,  
5 I'm glad that you pointed out that these  
6 are nonprecedential orders. And I think  
7 that that -- we just have to really think  
8 about how a nonprecedential order became  
9 so influential in a case.

10 And I don't know if that's under  
11 this charge 3 or not, but I just think  
12 it's worth thinking about how a  
13 nonprecedential case can influence the  
14 decision making versus an opinion that  
15 the court has issued and really sticking  
16 within the opinions of the court to  
17 really be able to guide us to  
18 understanding how a statute ought to  
19 apply.

20 JUSTICE HANTZ MARCONI: Well, and I  
21 think, frankly, this is a conversation  
22 that not just in this topic area is  
23 becoming -- and again, I look at the long  
24 ball, so -- or the long viewpoint.

25 Back in the day, when I started



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1 practicing, nothing was on the internet.  
2 And so you really only had a body of  
3 caselaw that was the "published opinions"  
4 that you could find. And we, as lawyers,  
5 would do a lot of digging in a particular  
6 case type to find trial court orders or  
7 other things.

8 So I think this is an evolution with  
9 more information being available. That  
10 old distinction between precedential  
11 orders, i.e., new statements of the law,  
12 and nonprecedential orders may be  
13 something that we in the court need to  
14 look at because even a so-called  
15 nonprecedential order applying old tort  
16 concepts or non-not-new contract  
17 interpretation can still provide guidance  
18 to a litigant.

19 And particularly in this space, I  
20 think those nonprecedential orders, while  
21 they aren't new statements of the law, we  
22 aren't overruling anything or making a  
23 new statement on an interpretation of  
24 statute, but certainly, it still provides  
25 guidance to litigants.



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1           So I think this issue has -- I can  
2           see a recommendation emanating from this  
3           task force to look at this space but not  
4           just -- looking at nonprecedential orders  
5           in this space but not just in this space,  
6           because the reality is they do provide  
7           guidance.

8           MS. SCHOLLETT: Justice Hantz  
9           Marconi, this is Lyn Schollett. I  
10          appreciate you saying that. And I was --  
11          I also appreciated that in the notes  
12          you've circulated -- and I'm doing my  
13          best to keep up. It's a lot of  
14          information, but Anne and Lisa have done  
15          a great job starting to pull out some  
16          proposed recommendations.

17          And this issue is complicated  
18          because we have, of course, so many  
19          victims who come to court completely  
20          unrepresented or may come with an  
21          advocate who's not an attorney.

22          So in addition to kind of this  
23          philosophical conversation about the  
24          impact of precedential and  
25          nonprecedential orders from the courts,



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1 I'd love us to think about training tools  
2 or guidance and how do we make that  
3 information from those orders as  
4 accessible as possible to people who  
5 aren't represented or are working with an  
6 advocate.

7 And advocates are very knowledgeable  
8 about the system, but we too felt that  
9 tremendous gap in information. While  
10 advocates can certainly be trained to  
11 learn the fundamentals of what needs to  
12 be in a petition, since it wasn't very  
13 accessible, that became challenging.

14 So I think -- I don't know if  
15 there's collaborative training or there  
16 would be guidebooks or there might be a  
17 handout. I don't know. Maybe it'll  
18 impact the forms discussion. But I'd  
19 like to think about, also, not just who  
20 can access it, but then what do we do  
21 with what we learn from those orders as  
22 they're changing over time.

23 JUSTICE HANTZ MARCONI: Well, that's  
24 an interesting topic. And one thing that  
25 has been percolating in the back of my



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1 mind, when former Chief Justice Broderick  
2 goes around and has his mental health  
3 initiative, he has a five -- and this --  
4 he has sort of the five warning points,  
5 red flags, folks with mental health  
6 issues, for people interacting with folks  
7 who may have mental health issues.

8 And it occurred to me -- and again,  
9 I -- it may be something that will  
10 emanate from this task force, but  
11 developing -- so I look at two things.  
12 The guided interview process but more  
13 sort of on paper, and also, perhaps, a  
14 card that highlights these trigger  
15 warnings, if you will, that could then --  
16 could be drawn from some of these case  
17 fact patterns. Just a thought, but yes,  
18 as a training tool to alert.

19 And we aren't just talking about  
20 advocates in the space or lawyers in the  
21 space but members of the public and court  
22 staff, again, in trying to guide the  
23 process where it needs to go.

24 And I see Pam nodding. I know she's  
25 dealt, over time, with lots of tools to



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1 try to help training DOVE attorneys sort  
2 of what to look for. So I think there is  
3 some improvement that we, perhaps, can  
4 facilitate.

5 MR. ENDRES: Steven Endres here. I  
6 guess, interestingly, I didn't even  
7 realize until recently that there were  
8 nonpublished 3JX opinions and  
9 nonpublished opinions that weren't on the  
10 internet.

11 And I guess if that's based on the  
12 Violence Against Women Act, that's  
13 something that'll be national in nature.  
14 And I'm just wondering what other states  
15 are doing. As I read the language from  
16 the Violence Against Women Act, I don't  
17 know that this prevents publication of  
18 Supreme Court cases. But that's not  
19 really up for my -- for me to interpret.

20 But presumably, other -- all fifty  
21 states are faced with this exact same  
22 issue. And I obviously -- I fall on the  
23 side of I would love to see these  
24 decisions published because I think more  
25 information is better.



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1           And I certainly agree with redacting  
2           names or putting in initials or even  
3           potentially retitling cases as Domestic  
4           Violence 1 or Domestic Violence 2 and  
5           just referring to the people as the  
6           defendant and the petitioner. And that  
7           way, it makes it even harder to figuring  
8           of who's who.

9           JUSTICE HANTZ MARCONI: Right. And  
10          another question that's come up is, do  
11          you identify -- and this is a bit  
12          esoteric, but in a way the statute is  
13          written, identifying information,  
14          location, so do you identify the circuit  
15          that the case is out of? You'll identify  
16          the trial judge, which would then  
17          identify the circuit, in fact, the  
18          district, the division that the case  
19          emanated from.

20          So I'd be curious to see what people  
21          think about the location issue, because  
22          certainly, a scrubbed opinion from a  
23          certain location could -- and again, this  
24          wouldn't be an exact violation, I don't  
25          think, of the Violence Against Women Act,



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1 until someone sues us, but would  
2 identifying the home town, for example,  
3 in small communities up north, would that  
4 be a link to identifying the location and  
5 perhaps putting a victim at risk? Has  
6 anyone thought about that?

7 MS. LAFRANCE: Yeah. Patricia  
8 LaFrance here. If we're going to scrub  
9 the information and put initials in there  
10 for the parties, I guess why wouldn't we  
11 also scrub the information about the  
12 judge and the location? What purpose  
13 does it serve keeping it in there?

14 I mean, I know for, I guess -- I  
15 don't know -- statistical purposes or if  
16 you're really looking for something from  
17 a particular judge, it's important. But  
18 in terms of just putting it in there,  
19 what is the purpose, if we're talking  
20 about keeping the parties' identities  
21 secret?

22 MR. ENDRES: The only thing that I  
23 can say that I like knowing who the judge  
24 is is because if I'm bringing that case  
25 in front of that same judge and saying, I



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1 have a 3JX opinion that's  
2 nonprecedential, but this person got  
3 flipped, if that's the judge I'm going in  
4 front of, it's always nice to know that  
5 they're the one whose decision may have  
6 been questioned.

7 JUDGE NICOLOSI: There are  
8 certain --

9 MS. KRUEGER: Yeah, I think --

10 JUDGE NICOLOSI: -- some rights  
11 openness in the process and some  
12 accountability on judges and all of that  
13 so that the -- if you scrub the name of a  
14 judge, you wouldn't even know whether or  
15 not the judge was following protocols  
16 or -- the public wouldn't. And there is  
17 a public's right to accountability for  
18 justice. So I would worry, if we got too  
19 much off, that we would offend that.

20 MS. KRUEGER: Yeah, I would agree.  
21 I think you can have the judge. You  
22 could scrub the Circuit Court and still  
23 have the judge. Judges move all over the  
24 place. But it does remove that  
25 accountability piece, which is part of



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1 the reason why we're here, right?

2 We're trying to talk about how we  
3 track these things, and not just -- when  
4 we have anecdotal information, how do we  
5 aggregate that so that it becomes more  
6 qualitative information that we can  
7 track. And doing that without judge  
8 names would just complicate that a little  
9 bit.

10 But I do think that as lawyers, when  
11 we, like, at New Hampshire Legal  
12 Assistance, when we share stories out to  
13 our funders, we change all kinds of  
14 information so that they can't identify  
15 the person who we served with a  
16 particular issue, the town, the  
17 occupation, things like that that could  
18 possibly allow someone to read it and  
19 figure out who it is.

20 And I think that's what the Violence  
21 Against Women Act is designed to do, so  
22 that you can't identify the location of  
23 that victim or who that victim is. So I  
24 think you would have to -- it's going to  
25 take more time and effort, but it's not



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1 like these orders are coming out on a  
2 weekly basis, so -- but it does require  
3 some work.

4 JUDGE NICOLOSI: And I don't see why  
5 something couldn't be preliminarily  
6 sealed, as much information as necessary,  
7 case by case. And once a petition is  
8 served and a hearing is scheduled, the  
9 information is out. And I wouldn't think  
10 there would be any reason to continue to  
11 keep that secret.

12 But at the initial filing of a  
13 petition, particularly when temporary  
14 orders are being considered, maybe that's  
15 a time that it can be filed with a motion  
16 to seal, so if they're not issued,  
17 somebody has the opportunity to withdraw  
18 it. But --

19 JUSTICE HANTZ MARCONI: So you're  
20 talking more about trial court orders?

21 JUDGE NICOLOSI: Yeah, any order  
22 that ultimately is issued by a judge has  
23 to be issued with some sort of notice and  
24 opportunity for a hearing. And at that  
25 point, the cat's out of the bag.



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1 But at the early stages of the case,  
2 we've talked about circumstances where a  
3 petition is filed and temporary orders  
4 may not be granted being the most lethal  
5 time, when no orders have issued but  
6 something's pending. During that period  
7 of time, I would think maybe that would  
8 be a more sensitive time for that  
9 information not to be divulged.

10 MS. KRUEGER: Well, I don't think  
11 that's being shared on the internet. I  
12 think the problem --

13 JUSTICE HANTZ MARCONI: Right.

14 MS. KRUEGER: -- is the internet,  
15 right, so and then public access to the  
16 information that the judges have.

17 JUDGE NICOLOSI: Yeah.

18 JUSTICE HANTZ MARCONI: Right. And  
19 that's why -- I mean, the intranet, we  
20 can circulate.

21 JUDGE NICOLOSI: Yeah.

22 JUSTICE HANTZ MARCONI: And so  
23 certainly, on our -- for example, you  
24 come to a kiosk, now that we have kiosks,  
25 which is only something we've had for the



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1 past year. But you go to a kiosk. You  
2 can search for case types and get orders  
3 from the Supreme Court. That's not the  
4 internet.

5 JUDGE NICOLOSI: Um-hum.

6 JUSTICE HANTZ MARCONI: That's  
7 different, according to my tech people,  
8 from posting on our website. So  
9 certainly, scrubbing, as we've talked  
10 about, is one option. And it really  
11 doesn't -- I don't think it works for the  
12 public. Might work for some of the  
13 advocates, but it really doesn't work for  
14 the public to go on the court kiosk and  
15 pull up all these old orders.

16 JUDGE NICOLOSI: Yeah.

17 JUSTICE HANTZ MARCONI: I mean, it  
18 could. It could be something you do once  
19 a month and see what we've been doing.  
20 But that alternative to scrubbing doesn't  
21 seem to really provide the public  
22 exposure that I think we're looking for.

23 MS. LAFRANCE: So another thought I  
24 had, as we're talking about what  
25 information to scrub and we're talking



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1 about occupations or what a person does  
2 for work or any other kind of identifying  
3 information, what happens if that  
4 information -- and I've been racking my  
5 brain trying to think of an example.

6 But what if it's key to some type of  
7 legal issue that the order addresses, but  
8 it doesn't necessarily specifically  
9 identify one person?

10 JUSTICE HANTZ MARCONI: For example,  
11 if they're a law enforcement officer?

12 MS. LAFRANCE: Right.

13 JUSTICE HANTZ MARCONI: Right?

14 MS. LAFRANCE: Yeah.

15 JUSTICE HANTZ MARCONI: It's a good  
16 question.

17 MS. LAFRANCE: As long as it's -- I  
18 was thinking uniquely identifying career  
19 or occupation would be a United States  
20 senator who used to be a governor. Okay,  
21 well --

22 JUSTICE HANTZ MARCONI: Right.  
23 Yeah.

24 MS. LAFRANCE: We only have two of  
25 those, so --



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1 JUSTICE HANTZ MARCONI: Yep. That's  
2 an interesting question. The statute  
3 says, yeah, "shall not make available  
4 publicly on the internet if such  
5 publication would be likely to reveal the  
6 identity or location of the party  
7 protected."

8 So it's really a question of those  
9 in the local community who could -- and  
10 this is what, I think, the court would  
11 have to spend its time thinking about --  
12 those in a small, local community, how  
13 much detail does it take to identify  
14 people?

15 MS. HORNICK: I was just going to  
16 say that I was looking at some of those  
17 statistics before the meeting started.  
18 And you look at the case numbers from  
19 some of those smaller circuits, and gee  
20 whiz, it would be, I think, pretty easy  
21 to figure out who's who in some of those  
22 locations. Yeah, that's a real  
23 challenge. Gee whiz. But --

24 JUSTICE HANTZ MARCONI: Doesn't mean  
25 we can't figure something out. And we do



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1 have, watching silently on the -- at this  
2 meeting, our head clerk, Tim Gudas, who's  
3 very interested in this discussion. So  
4 it will continue. And certainly, any  
5 thoughts, but that is one thing.

6 And someone mentioned this to me.  
7 In a small community up north, it  
8 wouldn't take much to identify. And so  
9 then I think the question is -- and maybe  
10 I don't even -- Tim will roll his eyes.  
11 I don't even want to go there, but we can  
12 look at what's posted on the internet and  
13 then what's available publicly.

14 But we can't have two official  
15 orders out of the Supreme Court. So it  
16 may be a balancing act. And it may be  
17 few cases that raise this challenge.

18 MS. KRUEGER: Yeah. And one thing  
19 you could do is, potentially, to say  
20 there is an order, and it's available --

21 JUSTICE HANTZ MARCONI: Right.

22 MS. KRUEGER: -- because that was  
23 really the thing is, like, we didn't even  
24 know that there was an order and  
25 potentially more --



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1 JUSTICE HANTZ MARCONI: Right.

2 MS. KRUEGER: -- that judges were  
3 looking at and --

4 JUSTICE HANTZ MARCONI: Right.

5 MS. KRUEGER: -- and utilizing.  
6 So --

7 JUSTICE HANTZ MARCONI: And maybe it  
8 is just here's a case number; the order's  
9 not posted because of the Violence  
10 Against Women Act, period, because  
11 certain states -- we've started to look  
12 at other states. They will put -- they  
13 have some standard blather they'll put at  
14 the bottom of the case, saying this has  
15 been scrubbed because, or -- and maybe we  
16 just adopt a provision that lets you  
17 know, lets people know there is an order,  
18 but we're not posting it.

19 MS. FREEMAN: One issue to be aware  
20 of is that these are not confidential  
21 case types. So --

22 JUSTICE HANTZ MARCONI: Right.

23 MS. FREEMAN: -- any member of the  
24 public could walk into any court location  
25 and request copies of the underlying DV



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1 order. So if you go into a small --

2 JUSTICE HANTZ MARCONI: Right.

3 MS. FREEMAN: -- location, where  
4 there may be ten orders from a particular  
5 month or year, with particular initials,  
6 it's very easy to identify which is a  
7 Supreme Court opinion from that court.

8 But on the flip side, anybody can  
9 walk into those circuit courts now and  
10 request that information, and in fact,  
11 can request that information before it  
12 has been served on a defendant in the  
13 case of a temporary order.

14 So I think this idea of not posting  
15 the Supreme Court opinions comes from a  
16 really good protective place because  
17 there may be reasons why you cannot scrub  
18 meaningfully identifying information from  
19 a Supreme Court opinion because of what  
20 has been said, the occupation, the  
21 immigration status, a lot of different  
22 characteristics that might be rare in a  
23 small, rural community in New Hampshire.

24 JUSTICE HANTZ MARCONI: And so then  
25 just noting that a case has been issued



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1 might not be a bad fix. It wouldn't  
2 change the dynamic all that much, because  
3 again, anyone could come into Supreme  
4 Court, look up DV case types on the  
5 kiosk, and get those nonprecedential  
6 orders because you're right. They are  
7 not confidential case types.

8 We have those that are confidential  
9 by statute; everything's confidential.  
10 These are not that, and the orders are  
11 available.

12 MS. DODGE: Do you think --

13 MS. SCHOLLETT: This is Lyn  
14 Schollet.

15 MS. DODGE: Oh, sorry.

16 MS. SCHOLLETT: Go ahead, Pam.

17 MS. DODGE: No, go ahead, Lyn. I  
18 can wait.

19 MS. SCHOLLETT: I just had a follow-  
20 up question. And maybe this is my not  
21 knowing the system well enough. I guess  
22 I wonder, if that were the case, how is  
23 that practically different than where we  
24 are now? Wouldn't, if we -- wouldn't  
25 judges still be having access to those



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1 nonprecedential opinions and possibly  
2 relying on them, but they still would be  
3 less accessible to unrepresented  
4 litigants?

5 JUSTICE HANTZ MARCONI: They'd still  
6 be -- they'd be -- people who went to the  
7 website would know they existed, but  
8 they'd still have to go make an effort to  
9 obtain them, yeah. They couldn't just  
10 read them on the internet.

11 MS. SCHOLLETT: Which just seems  
12 like a very high bar for people who don't  
13 have a lawyer and advocate. I think  
14 that's not -- I don't think that's  
15 practical for a lot of those, so --

16 JUSTICE HANTZ MARCONI: I think, as  
17 Steve mentioned, it's probably a high bar  
18 for people who are a lawyer, right, that  
19 not everybody -- even though we try to  
20 make our website very transparent and  
21 user-friendly, it isn't always, so --

22 MS. SCHOLLETT: Well, maybe this  
23 is -- maybe this is an issue, then, for a  
24 recommendation to be about having a  
25 working group that would look at this,



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1 because it seems like we need a lot of --  
2 we need a lot of the same stakeholders  
3 who are here to have input on,  
4 practically, how that would pan out --

5 JUSTICE HANTZ MARCONI: Yeah.

6 MS. SCHOLLETT: -- maybe including  
7 adding a few front-line advocates.

8 JUSTICE HANTZ MARCONI: Yeah.

9 MS. DODGE: One thing I was thinking  
10 we could add to it is if we did just a  
11 list of the case numbers, if we could put  
12 relative to what the precedential case is  
13 so that people who see that there are  
14 cases out know what it is about, and then  
15 they can go find the case.

16 JUDGE NICOLOSI: Yeah. Yeah, there  
17 could be a little --

18 MS. DODGE: So if they have --

19 JUDGE NICOLOSI: -- summary, like,  
20 just what the subject matter, what the  
21 legal issue is --

22 MS. DODGE: Exactly.

23 JUDGE NICOLOSI: -- in the case,  
24 so --

25 MS. DODGE: And that way --



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1 JUDGE NICOLOSI: -- like, with the  
2 docket number. And then we could know,  
3 at least, what the courts addressed,  
4 sufficiency of --

5 MS. DODGE: Right.

6 JUDGE NICOLOSI: -- evidence or  
7 interpretation of the statute or some  
8 little blurb.

9 MS. DODGE: Yeah. And it's not just  
10 this long list of cases.

11 JUDGE NICOLOSI: Yeah.

12 JUSTICE HANTZ MARCONI: Right.

13 MS. PAINE: I think, though, one of  
14 the underlying pieces here is the gap  
15 between the sort of public understanding  
16 of IPV and what it takes to get a  
17 protective order. And we would do this  
18 to try to close the gap and to provide  
19 the language that the court is using when  
20 it upholds the issuance of a order of  
21 protection.

22 And the problem that if there's  
23 going to be a working group would need to  
24 think about is that's a constant. And to  
25 keep training materials updated for



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1 practitioners, for advocates, for -- and  
2 how to keep any sort of public  
3 information for those petitioners who  
4 aren't going to seek counsel or an  
5 advocate, how do we -- how do we even  
6 give them the tools that they need and  
7 keep whatever it is as up to date as  
8 judges are?

9 And I think one of the gaps that  
10 opened up in the case that started this  
11 was the gap between what was understood  
12 on one side of the counter and the  
13 driving factors of all of the opinions  
14 that were being considered.

15 JUSTICE HANTZ MARCONI: Again, I  
16 almost get, too, in the handout materials  
17 that are routinely disseminated -- you're  
18 right, keeping up to date on what can,  
19 what does, and what doesn't constitute a  
20 basis for relief under 173-B may be an  
21 opportunity to do some of that educating,  
22 drawn from these cases.

23 I don't see members of the public  
24 doing that sort of analysis. I do see  
25 that coming from an entity that is in the



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1 business of preparing those materials.  
2 Some of that comes from the court. A lot  
3 of it comes from other -- where's Pam --  
4 from other agencies that are tasked with  
5 preparing those materials.

6 JUDGE NICOLOSI: And we talked last  
7 time about doing some sort of guided  
8 interviews, elicit information, which I  
9 think is a fabulous idea because it  
10 allows structure for people to fill in  
11 information that might be informed a  
12 little by people -- by the Supreme Court  
13 cases.

14 What I find with -- in a lot of the  
15 cases -- and I don't do many, at this  
16 point, in the Superior Court, but we talk  
17 about either getting too much or too  
18 little. And there's really truth to that  
19 because you have to kind of get  
20 (indiscernible) enough in a thirty-minute  
21 hearing to be able to focus people.

22 And it's hard to do that with making  
23 people not -- trying to get -- allow  
24 people to feel heard but to try and guide  
25 them. And if there was some sort of



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1 questionnaire or something that would  
2 help people do that, I think that  
3 would -- maybe we could respond in --  
4 with those questions to the legal issues  
5 that have come up from the people who do  
6 know, do follow it.

7 We talked -- I was listening to us  
8 talking about the -- that the belief that  
9 there has to be an injury that happens or  
10 an event that happens that's recent.  
11 It's just not consistent with the  
12 language of the statute. That may  
13 satisfy one part of the proof. But a  
14 judge should really be looking at the  
15 whole history of the relationship for  
16 deciding whether or not there's some sort  
17 of real risk of harm.

18 And but those you could break down  
19 into questions, I think, which would help  
20 the judges, too, make a good decision.

21 JUSTICE HANTZ MARCONI: Yeah.

22 MR. STRASBURGER: This is Jon  
23 Strasburger. I would support if there is  
24 a way to publish even the nonprecedential  
25 opinions. As somebody who litigates both



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1 sides of these cases on a regular basis,  
2 I think if there's a way to scrub the  
3 opinions so that they are compliant with  
4 the Violence Against Women Act, it would  
5 make sense to make them available.

6 I mean, based upon my review of the  
7 report from the internal review that was  
8 done, it looks like there are memos that  
9 are regularly circulated amongst the  
10 bench. And I would think it would make  
11 sense for both the public and for  
12 advocates and attorneys to have that  
13 information.

14 I hear everybody's concerns about  
15 making sure that identities of litigants  
16 are not at risk. I think that's a  
17 significant concern. But just to mirror  
18 what Lyn was saying, I think if members  
19 of the public and even counsel are  
20 limited to looking at opinions on a  
21 kiosk, that's going to make the access to  
22 the information pretty difficult to get.

23 So I would just say if it's  
24 something that's going to be circulated,  
25 if these are opinions that are going to



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1 be circulated amongst the bench, I would  
2 think it would be helpful for attorneys  
3 and advocates and members of the public  
4 who have to participate in this process  
5 to have access to that information.

6 JUSTICE HANTZ MARCONI: Well, and  
7 the other thing I don't know -- and I'll  
8 put Judge Carbon on the spot. I don't  
9 know how long -- again, I think of my --  
10 I started practice with no internet at  
11 all.

12 And my former partner, Morgan  
13 Hollis, would say, remember the good old  
14 days when you would dictate a letter, get  
15 typed up, mail to the other side, and  
16 you'd have a few days to, like, relax  
17 before the response came back with the  
18 amending contract, and then you picked it  
19 up again, and things happened at a much  
20 slower pace.

21 I don't know, in the olden days, how  
22 many of those orders got circulated among  
23 the bench. But now, in this world that  
24 we live in, they are. And so it has  
25 created this sort of -- a different level



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1 of information sharing that only went so  
2 far.

3 So I don't know if Judge Carbon can  
4 speak to that at all, but I surmise  
5 there's a bit of a difference.

6 JUDGE CARBON: Well, certainly, now,  
7 with having internet capability and being  
8 able to email, judges have listservs like  
9 the lawyers do, and we share information.  
10 We also have some staff attorneys who  
11 routinely do summaries of the most  
12 significant cases. So that's another way  
13 that they're brought to our attention  
14 quickly.

15 But we always read decisions that  
16 come out, of course, to be updated on  
17 them. But these are pieces of  
18 information that are more readily  
19 accessible to us than they were in the  
20 past. And that's just very helpful for  
21 us, keeping current, but it means that  
22 you've got the bench that may be more  
23 current with what's going on than the bar  
24 and the public. I think there's the rub  
25 that is the concern dealing with here.



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1 JUSTICE HANTZ MARCONI: Yeah. I  
2 find this. You look at big trends. And  
3 this is me, and you'll probably get sick  
4 of this. But I look at things sort of  
5 over time. And I won't go too far  
6 afield, but I think it was Steve Forbes  
7 did a really wonderful speech, once,  
8 about the Industrial Revolution bringing  
9 people together in close proximity and  
10 the internet spreading people out but  
11 also providing almost more intimate  
12 interaction with information.

13 So I see this point where we are  
14 right now as a confluence of many  
15 factors. So that's my Philosophy 101, if  
16 you're (audio interference).

17 MR. ENDRES: Another thing I'm  
18 thinking about with information on the  
19 internet is the Supreme Court livestreams  
20 a lot of their oral arguments now. And  
21 I'm wondering are domestic violence cases  
22 that are having oral arguments in front  
23 of the Supreme Court being livestreamed,  
24 and if so, if that violates the Violence  
25 Against Women Act.



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1 JUDGE NICOLOSI: A great question.

2 JUSTICE HANTZ MARCONI: And this is  
3 interesting. They're public, so my --  
4 and I'll be corrected by everybody else  
5 who works here. But if a domestic  
6 violence case is argued, it would be  
7 argued without reference to any  
8 identifying information. So it's person  
9 A, person B, and no other. And lawyers  
10 are instructed, and we are instructed,  
11 and no one asks any identifying  
12 questions.

13 Often or alternatively, if they're  
14 done on a submit basis, then, of course,  
15 there is no argument. But the argument  
16 itself would be livestreamed because it's  
17 not a confidential case. So we only so-  
18 called clear the courtroom and limit the  
19 livestream if it's a statutorily  
20 confidential case.

21 MS. LAFRANCE: So I have a quick  
22 question/comment. As we're talking about  
23 what information to put, how much  
24 information to put out there, as I read  
25 VAWA, that particular section about



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1 publicly identifying individuals, what's  
2 the remedy? And what if the disclosure  
3 is inadvertent? There's no mens rea, if  
4 you will, in that statute.

5 Is it only a state can't knowingly  
6 put the information out there? What if  
7 we come up with this brilliant way to  
8 scrub everything that would identify a  
9 victim, put all the opinions, whether  
10 they're precedential or not, out there,  
11 and then whoever's doing the redacting or  
12 whatever needs to be done misses  
13 something? What is the remedy? Do we  
14 remove it? Do we correct it? Is there  
15 some type of slap on the wrist? What do  
16 we do?

17 JUSTICE HANTZ MARCONI: It's a good  
18 question.

19 MS. LAFRANCE: I don't see that in  
20 the VAWA, right? It doesn't say what the  
21 remedy is. It just says, don't do it.

22 JUSTICE HANTZ MARCONI: Right.  
23 Maybe Merrick Garland comes and -- I  
24 don't know -- shuts us down. It's a very  
25 good question. Then we could have a big



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1 federalism and have a big court case.

2 But I think it's -- I mean, it says

3 "shall". But you're right. If someone

4 misses it, who knows?

5 If it's a -- and again, for a couple

6 of years, we were posting until we

7 realized we shouldn't be posting. And

8 maybe we should have thought longer and

9 harder about alternatives to not posting.

10 But that's a very good question for which

11 I have no answer.

12 Amanda, do you have any idea of what

13 the thought was? Weren't you involved

14 with this, or at least amendments

15 thereto? No?

16 MS. SEXTON: I'm not sure I read

17 that provision the same way. I think I

18 might be in the same boat as Steve. But

19 I think that there's clearly a way to

20 work through this. I think it's going

21 to -- we could continue to have this

22 discussion for many hours.

23 So I do think it makes sense to have

24 a recommendation that a group of diverse

25 stakeholders take a look at how we can



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1 make sure that people have the critical  
2 information that they need without  
3 putting survivors in future danger.

4 But I think that that will take some  
5 time, and I think that it is a good  
6 recommendation that should move forward  
7 from this committee. That's how I  
8 personally feel.

9 JUSTICE HANTZ MARCONI: Great.

10 MS. FREEMAN: What about publication  
11 in the "Bar News" in a way that's not  
12 necessarily published on the website but  
13 goes out in the printed document that is  
14 accessible to the -- all the lawyers out  
15 there, and especially the lawyers who are  
16 creating material that are used by  
17 survivors and advocates to inform the  
18 process?

19 I don't know of the logistics of  
20 that, but there are other ways to get the  
21 information to lawyers that don't involve  
22 the internet that are not as part of a  
23 summons going to the Supreme Court.

24 MS. LAFRANCE: I would say I'm not  
25 sure if the New Hampshire Bar has the



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1 bandwidth to handle that. I mean,  
2 that's -- that would increase their --  
3 the "Bar News" significantly, right, if  
4 you're putting all these opinions in  
5 there.

6 JUSTICE HANTZ MARCONI: Well, and we  
7 may not -- and I should have done my  
8 homework in terms of annual numbers of  
9 our cases, which I don't think I did.  
10 But whether they could do it from time to  
11 time, I don't know. It's an interesting  
12 concept.

13 MS. DODGE: Well, and that was one  
14 of the other things that I was wondering  
15 is if the -- if it's not the court's  
16 website that's going to be the  
17 clearinghouse for this information, what  
18 would be the appropriate resource? Where  
19 is somebody going to go to get this  
20 information?

21 And I don't -- I think about  
22 survivors and where they would typically  
23 go. And it's probably their local crisis  
24 center or to the New Hampshire  
25 Coalition's website, so I -- and I'm not



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1       trying to say that's what should happen,  
2       but I'm just trying to think, down the  
3       road, if this information isn't on the  
4       court's website, where is it going to be?

5               JUSTICE HANTZ MARCONI: Interesting  
6       concept for a workaround, maybe.

7               MS. DODGE: Well, yeah. I mean, and  
8       perhaps the court's website could publish  
9       the case numbers in a quick blurb and  
10      then direction about you can seek support  
11      from your local crisis center or visit  
12      the Coalition's website for more  
13      information on how to access information  
14      on Supreme Court decisions.

15              MS. KRUEGER: I like the idea of  
16      having the recommendation -- I second  
17      what Amanda said about having a group  
18      work on this.

19              When we discuss this within NHLA and  
20      our advocates, it inevitably leads to the  
21      question that Sarah Freeman also brought  
22      up of once you know that there is an  
23      order, then you can do some digging to  
24      pretty quickly figure out who people are.  
25      I mean, you just look at the briefs,



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1 right? Like, we're not, as attorneys,  
2 told to scrub our briefs

3 JUSTICE HANTZ MARCONI: Right.

4 MS. KRUEGER: And so you can easily,  
5 if you wanted to, go to the Supreme Court  
6 and figure out who people are. So how  
7 far -- and that gets a little afield of  
8 the VAWA provision, which is what it is.  
9 And if you're going to follow it, that's  
10 what you need to do.

11 But there's these other issues that  
12 inevitably come up about the ability to  
13 identify a victim and find a victim,  
14 based on the public court record. And so  
15 I don't know how we can have this  
16 conversation without having that one.

17 JUSTICE HANTZ MARCONI: Well, that's  
18 the other point. Is there a missing link  
19 here? Should these be confidential  
20 cases? That, again, is a -- that could  
21 be something for the legislature, but  
22 they aren't right now.

23 So I agree there might be a larger  
24 discussion to be had, which brings me to  
25 something I've been remiss of announcing



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1 or requesting of this group. But as we  
2 move through these topics, we and the  
3 working group are collecting all these  
4 thoughts -- they aren't just evaporating  
5 into thin air -- and will be working on  
6 fleshing out some recommendations.

7 And not today, but what I'm going to  
8 want is some volunteers for each of these  
9 topics to work with the working group to  
10 flesh out our recommendations that'll  
11 then be circulated to everyone.

12 But I want folks who are invested or  
13 have ideas or have thought this through,  
14 like NHLA, on various topics to sort of  
15 be the touchstone for the worker bees who  
16 are going to be doing some of the writing  
17 so that we don't have twenty people  
18 trying to write a report, which would be  
19 like trying to create -- like, a horse by  
20 committee ends up being a camel or  
21 something like that.

22 So with this particular issue, if  
23 NHLA has been thinking about it, maybe  
24 you volunteer to spend some time on it  
25 with my working group. And with others,



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1 as to any other topics that we have  
2 covered or will cover, I'm going to be  
3 looking for one or two or three folks to  
4 volunteer.

5 MS. KRUEGER: Absolutely.

6 JUSTICE HANTZ MARCONI: Good.

7 MS. KRUEGER: We're here.

8 JUSTICE HANTZ MARCONI: Good.

9 Anything else on this? Any other  
10 thoughts on this particular topic?

11 And I'll just throw out, although  
12 wasn't exactly in our purview, but there  
13 is no central posting of trial court  
14 orders, although they're, in this  
15 instance, form orders in a way, although  
16 some have narrative aspects to them. So  
17 that may be something that as the future  
18 unfolds, and maybe as we get to e-Filing,  
19 is something that needs to be kept on our  
20 radar screen.

21 Okay. Anything else from anyone  
22 else? You're all ready to call it a day.  
23 All right. Thanks so much. I've been  
24 getting, as you know, not to overwhelm  
25 you, but in some quiet moment, go to the



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1       Dropbox. We've been getting lots of  
2       information, which I'm kind of amazed at  
3       the extent of information that's out  
4       there but not all in one repository.

5               So that may give us another  
6       recommendation at some point. But we are  
7       uploading stuff as we get it, and keep it  
8       coming.

9               JUDGE NICOLOSI: And one of the  
10       (audio interference) we discussed at the  
11       last meeting -- and it didn't make its  
12       way to the notes -- was the continuation  
13       of a CBPO after somebody's convicted of a  
14       crime so that there's some immediate  
15       response from law enforcement. And I  
16       wasn't sure whether that would butt up  
17       against any sort of federal law that  
18       people knew, or if that's a statute that  
19       would require a statutory change.

20               We've been batting around a little  
21       bit the idea of continuing a case without  
22       a finding so there's a CBPO that  
23       continues. But that's not really a good,  
24       functional way of doing it. But it's  
25       really a very good point that we issue



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1 these no-contact orders. They're only  
2 effective with a suspended sentence, and  
3 there's really no emergency response or  
4 generation nationally of the orders. So  
5 we could put that on --

6 MS. PAINE: Judge Nicolosi, when we  
7 created the CBPOs, we did it through the  
8 bail statute. So there's -- that's the  
9 statutory authority for the CBPO. And --

10 JUDGE NICOLOSI: Um-hum.

11 MS. PAINE: -- in -- when we did it,  
12 we did discuss the hope, probability,  
13 possibility that there could be a  
14 sentencing protective order that would  
15 then have a life after the bail statute's  
16 jurisdiction sort of ran out.

17 JUDGE NICOLOSI: Yeah.

18 MS. PAINE: But I think it would  
19 require a statutory change.

20 JUDGE NICOLOSI: Yeah. That might  
21 be a good thing to keep on the list.

22 JUSTICE HANTZ MARCONI: Right. I  
23 think it could be a good thing to put on  
24 our radar, a recommendation and perhaps a  
25 suggestion as to who might be involved in



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1 that, going forward. If it is sort of  
2 from the bail perspective or corrections,  
3 whatever, there may be folks outside of  
4 our task force that are going to need to  
5 be involved.

6 JUDGE NICOLOSI: Um-hum. Okay.

7 JUSTICE HANTZ MARCONI: All right.  
8 Good chat. Thank you, all, again. I  
9 sound like a broken record, but I think  
10 we are casting a wide net. So lots of  
11 projects that I've been involved in --  
12 this is one of them -- things get really,  
13 really, really wide, and then it's like,  
14 oh my God, this is never going to get to  
15 a place where it's going to produce  
16 anything effective.

17 But I see this going wide and then  
18 getting focused. And I think we're going  
19 to have some good outcome, just me. So  
20 thanks again for your patience. Thanks  
21 for putting up with me and the structure.  
22 And I appreciate your attention. And we  
23 will meet again shortly, like tomorrow.  
24 Goodbye.

25 MR. VICINANZO: Yeah. Thank you,



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1 Justice.

2 INV. BERNIER: Good night,  
3 everybody.

4 (End of audio)

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## 1 C E R T I F I C A T I O N

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3 I, Cheryl Odom, certify that the  
4 foregoing transcript is a true and  
5 accurate record of the proceedings.

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